

**PUBLIC LAW BOARD NO. 6249**

**PARTIES     )**       **BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES**  
**TO            )**  
**DISPUTE     )**       **UNION PACIFIC RAILROAD COMPANY (FORMER ST. LOUIS**  
                          **SOUTHWESTERN RAILWAY COMPANY)**

**STATEMENT OF CLAIM**

Claim of the System Committee of the Brotherhood that:

1. The Agreement was violated when the Carrier assigned an outside concern (Neosho Construction Company) to perform dirt work between Mile Posts 296 and 296, Pole 32, at Pratt, Kansas on March 11, 1996 through April 13, 1996 (System File MW-96-36-CB/BMW 96-194).

2. The Agreement was further violated when the Carrier failed to reduce the incidence of sub-contracting as stipulated in the December, 11, 1981 Letter of Agreement.

3. As a consequence of the violations referred to in Parts (1) and/or (2) above, Foreman J. C. Martinez and Machine Operators J. D. Evans, M. M. Applegate, W. L. Reese, J. J. Hagan and R. G. Thompson shall each be allowed one hundred ninety-two (192) hours of pay at the their respective straight time rate and

ninety-eight (98) hours of pay at their respective time and one-half rates.

**OPINION OF BOARD**

By notice dated October 24, 1995, the Carrier advised the Organization of its intent to utilize a contractor to construct a new siding and to extend two existing sidings between El Paso, Texas and Herrington, Kansas, which work included certain grading and filling work. The notice specified that outside forces would be used "[d]ue to time constraints and the necessity to use specialized earth moving equipment ...." The Carrier supplemented that notice on May 20, 1996, advising the Organization of its intent to utilize an outside contractor to perform similar work in connection with the extension of the existing siding at Pratt, Kansas.

The work was performed by outside forces at Pratt as stated in the notice. This claim followed.

In its May 9, 1996 letter, the Organization stated that "... the Southern Pacific had a Road Grader and Dozer assigned to this territory in the past, doing dirt work."

The Carrier responded on July 2, 1996 that:

\* \* \*

Carrier does not have the equipment, the employees, nor the expertise to undertake projects of this magnitude that involve moving of dirt and construction of sub-grade requiring heavy equipment such as scrapers, dozers, motor graders, and dump trucks. These positions require skilled and qualified operators to safety and efficiently operate this type of machinery. Accordingly, your claim is respectfully denied.

The Organization's responses of July 10 and August 21, 1996 essentially were a reiteration or a reproduction of its May 9, 1996 letter. Statements from employees were also provided asserting that they have performed similar work in the past.

The Organization's position developed on the property is that the Carrier did not comply with Article 33 and the commitment to reduce the incidence of contracting out of work as stated in the December 11, 1981 letter.

The claim lacks merit

First, the Carrier's Article 33 notice obligations were met. The

Carrier gave the Organization notice and a supplemental notice of its intent to contract out the disputed work.

Second, we can only decide these cases on the records as they are developed on the property and presented to us. Here, the Carrier asserts that it had to contract out the work, in part, due to "... the necessity to use specialized earth moving equipment ...." and "Carrier does not have the equipment, the employees, nor the expertise to undertake projects of this magnitude that involve moving of dirt and construction of sub-grade requiring heavy equipment such as scrapers, dozers, motor graders, and dump trucks." The Organization does not effectively refute those assertions. At best, the employee statements show that they may have done similar work in the past. However, the Carrier's asserted need for more specialized equipment for the project remains effectively un rebutted. The Organization's assertion that "... the Southern Pacific had a Road Grader and Dozer assigned to this territory in the past, doing dirt work" falls short of rebutting the Carrier's assertion concerning the need for specialized equipment which it did not possess. At best,

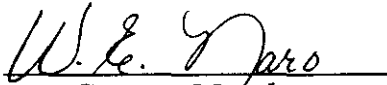
the record is in conflict. A record in conflict cannot be read to meet the Organization's burden.

**AWARD**

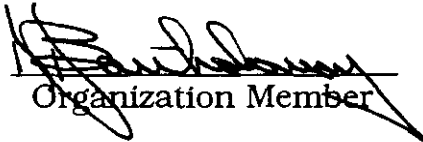
Claim denied.



Edwin H. Benn  
Neutral Member



Carrier Member



Organization Member

Dated: 7-24-02